



May 26, 2000

Mr. Charles E. Soechting
Attorney at Law
400 West Hopkins, Suite 101
San Marcos, Texas 78666

Chief Don Hatcher
Leander Police Department
Post Office Box 319
Leander, Texas 78646-0319

OR2000-0850A

Dear Gentlemen:

Mr. Soechting, on behalf of the requestor, Mr. Brad Willcut, asks this office to examine Open Records Letter No. 2000-0850 (2000) to determine whether certain information is subject to required public disclosure under chapter 552 of the Government Code. The request was assigned ID#135119.

The City of Leander Police Department (the "department") received a request for a specified incident report related to a theft at 2505 N. Highway 183. In January of this year, the department sought an attorney general decision and claimed that the requested information was excepted from disclosure under section 552.108 of the Government Code. In Open Records Letter No. 2000-0850 (2000), we found that the department could withhold the requested report, except for basic information, under section 552.108. Mr. Soechting now asks this office to examine Open Records Letter No. 2000-0850 (2000) in light of his contention that the department failed to seek a timely attorney general decision under section 552.301 of the Government Code.

In this instance, Mr. Soechting has informed this office that the requestor originally sought the incident report on December 8, 1999. He has provided evidence of this request and that he sent it to the department. The department, however, did not seek an attorney general decision to withhold the requested information until January 21, 2000. Gov't Code § 552.308. The request for a decision was apparently brought about by Mr. Willcut's second request for the report; this second request was submitted on January 18, 2000. Gov't Code § 552.301(a). However, it is apparent to this office that the department did indeed receive

a written request for the report on December 8, 1999. Moreover, it appears that this office had evidence of this December 8, 1999, request at the time we issued Open Records Letter No. 2000-0850 and that we erred in not considering the December 8 request when we issued the ruling. Where this office determines that an error is made when determining a governmental body's timeliness in submitting required information in the decision process under section 552.301, and that error resulted in an incorrect decision, we will correct the previously issued ruling.

Subsections 552.301(a) and (b) of the Government Code provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

As stated above, it appears that the department first received the request on December 8, 1999 and did not seek an attorney general decision until January 21, 2000. Thus, this office did not receive the request for a decision within the ten business day period mandated by section 552.301(a). Since the request for a decision was not timely received, the requested information is presumed to be public information and must be released unless there is a compelling reason to withhold the information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); see Open Records Decision No. 630 (1994). The department has not raised any specific compelling reasons to overcome the presumption that the information is public in this instance. Thus, we conclude that since the department first received the request on December 8, 1999, the information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

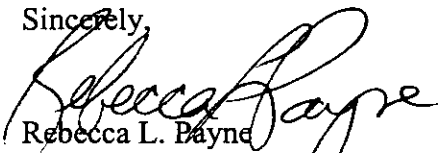
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Rebecca L. Payne
Assistant Attorney General
Chief, Open Records Division

JDB/ljp/sm

Ref: ID# 135119

Encl. Open Records Letter No. 2000-0850 (2000)

cc: Mr. Brad Willcut
Texas Auto Outlet
15328 FM 1825
Pflugerville, Texas 78660
(w/ Open Records Letter No. 2000-0850 (2000))